



March 19, 2001

Mr. James L. Hall
Associate General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-1069

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145075.

The Texas Department of Criminal Justice (the "department") received a written request for records pertaining to an internal affairs investigation regarding the improper release of information about an inmate. You contend that the requested information is excepted from disclosure under sections 552.101, 552.107(2), 552.108, and 552.131 of the Government Code.

Section 552.131(a) of the Government Code provides:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Section 552.131 is specifically made subject to section 552.029 of the Government Code, which provides:

Notwithstanding Section 508.313 or 552.131, the following information about an inmate who is confined in a facility operated by or under a contract

with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

- (1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
- (2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;
- (3) the offense for which the inmate was convicted or the judgment and sentence for that offense;
- (4) the county and court in which the inmate was convicted;
- (5) the inmate's earliest or latest possible release dates;
- (6) the inmate's parole date or earliest possible parole date;
- (7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor; or
- (8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.¹

Upon review of the submitted information, we conclude that the department may withhold some of the information from the requestor under section 552.131(a), as it is "information about an inmate who is confined in a facility operated by or under a contract with the department." We have marked a representative sample of the types of information the department must withhold pursuant to section 552.131.²

On the other hand, some of the information about the inmate is specifically made public under section 552.029. You raise sections 552.101 and 552.107(2) in conjunction with *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and vacated in part*, 679 F.2d 1115 (5th Cir.), *amended in part*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). Section 552.101 of the Government Code protects "information

¹Act of May 26, 1999, 76th Leg., R.S., H.B. 1379, § 2 (codified at Gov't Code § 552.029).

²We note, however, that because section 552.131 is explicitly made subject to section 552.029, the department may not withhold any of the types of information listed under section 552.029.

considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and section 552.107(2) requires withholding information that “a court by order has prohibited disclosure.” The *Ruiz* decision restricted the dissemination of “sensitive information” regarding prison inmates. The *Ruiz* final judgement, entered December 11, 1992, gave the Board of Criminal Justice authority to define “sensitive information.” This Board met on January 21, 2000, and decided:

The term ‘Sensitive Information’ shall include all information regarding TDCJ-ID offenders not required to be disclosed pursuant to Section 552.029, Government Code.

Thus, information in the categories delineated in section 552.029 of the Government Code is not “sensitive” information subject to *Ruiz*. The submitted information found to be within the ambit of section 552.029 may not be withheld under either section 552.101 or 552.107(2) of the Government Code. Accordingly, the department must withhold only those types of inmate information we have marked, consisting of certain information about the inmate’s eligibility for parole and the current location of his family; the remaining inmate information must be released pursuant to section 552.029 of the Government Code.

Most of the information at issue, however, is not information “about an inmate.” Rather, the focus of the internal affairs investigation concerns the unlawful distribution of inmate information by and between department employees. This information does not come under the protection of section 552.131. We therefore must address the applicability of section 552.108(a)(1) of the Government Code, which protects “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” You have not demonstrated to this office that the information at issue relates to a pending criminal investigation that the department intends to refer for prosecution. We therefore conclude that you have not met your burden of demonstrating the applicability of section 552.108(a)(1). None of the information at issue may be withheld under this exception. You have raised no other applicable exception to public disclosure for this information. Accordingly, the department must release the remaining information in its entirety, with the following exceptions.

Section 552.117(3) of the Government Code excepts from public disclosure “information that relates to the home address, home telephone number, or social security number, or that reveals whether” a department employee “has family members.” The department must withhold these types of information pursuant to section 552.117(3). We have marked a representative sample of the information that the department must withhold.

Finally, section 552.130(a)(1) of the Government Code requires the department to withhold “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Also, section 552.130(a)(2) of the Government Code

requires the withholding of information relating to “a motor vehicle title or registration issued by an agency of this state.” Consequently, the department must withhold all Texas driver’s license numbers and all Texas license plate numbers contained in the records at issue pursuant to section 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Karen A. Eckerle".

Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/RWP/seg

Ref: ID# 145075

Encl. Submitted documents

cc: Ms. Carol Boyd
707 Chancellor Drive
Palestine, Texas 75801
(w/o enclosures)